DPNC GLOBAL

INPUT TAX CREDIT UNDER GST

Input Tax Credit (ITC) under GST – A tumult yet to be untangled!

On 1st February 2022, the Finance Minister Ms. Nirmala Sitharaman under the leadership of our Honorable Prime Minister, tabled the Union Budget for FY 22-23 wherein she has made some arduous choices to continue our march toward an audacious target of **"India - A USD 5 trillion economic superpower"**. Keeping in mind the motive of installing much needed resiliency in the economy, laudable provisions have been made in the budget for various crucial sectors of the economy. With the ever-highest capital expenditure as envisaged in budget stealing the show and hitting daily headlines, there is a plethora of topsy-turvy amendments proposed in Indirect taxation regime which will consequently lead to a cumbersome compliance mechanism under GST regime.

Herein, this piece of writing will try to elucidate more about the provisions incorporated in the Finance Bill 2022 w.r.t. ITC availement under GST.

Sr. No.	Particulars	Amendment
1	**Restrictions on ITC availement**	In **Budget 2021**, clause (aa) was inserted in sub-section (2) of section 16, which stated that ITC shall be available only if respective invoices have been uploaded by the vendors in their GSTR-1 and the same is communicated to the recipient through common portal. Even before the industry would have grasped this aforesaid provision, **Budget 2022** proposes to impose additional restrictions on ITC availement. A **new clause (ba) to sub section (2) of section 16** is being inserted to provide that **ITC with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.** Accordingly, **section 38 of CGST Act 2017** has also been substituted whereby certain situations in which ITC shall be restricted are enumerated

		A brief description of the same is given hereunder: - • The supplier has made the supply within a specified period after obtaining registration; • The supplier has defaulted in payment of tax for a specified period and such default has continued for specified period; • The tax liability as per the details of outward supplies disclosed in the GSTR 1 by the Supplier exceeds the tax actually paid by him by a specified limit; • The supplier has availed ITC in excess of what is available to him as per his GSTR 2B above a specified limit; • The supplier has defaulted in paying tax in the proportion of ITC to cash prescribed under Section 49 (12); • The supplier is amongst the class of persons specified. So, in light of above proposed changes, going forward, for availing ITC, a registered person, **apart from complying the conditions of section 16(2) would now be required to fulfill the conditions as stipulated in section 38.** Section 38 (2), which inter-alia provides for the above-mentioned restrictions, will provide for the system generated block credit which will be in addition to section 17 (5) which deals with the block credit as per the nature of supply.
2	**Change in time-limit to avail ITC**	**Sub-section 4 of section 16** is being amended so as to provide for an extended time for availement of ITC by a registered person in respect of any invoice or debit note pertaining to a financial year **upto 30th day of November** of the following financial year. It is pertinent to note that earlier, the time limit was linked with the due date of filing the return for the month of September of the subsequent year, which was 20th October. This time limit has now been extended till 30th November. This means that the ITC of

		invoices pertaining to the previous financial year can be availed in the returns filed on or before 30th November. Income Tax provisions provides that assessee needs to finalize his accounts and thereby file his returns by 31st October after completion of the financial year. Hence, with this amendment, assessee will get a fair time to avail or reverse the credit as their accounts will get finalized by 31st October. **Therefore, by virtue of this proposed amendment, the assessee who is timely complying with the law will be able to claim or reverse the credit as the case may be without any lapse of time.**
3	**ITC reversal in case of non-payment by supplier**	Section 41 is proposed to be replaced which will provide the mechanism for **ITC availement**. However, it is worthy to note that up till now, ITC availement was dealt under section 16 only which provides for the eligibility and conditions for credit availement. As per the proposed amendment, recipient will be entitled to avail the credit on self-assessment basis in his GSTR 3B which will get credited to his electronic credit ledger. The section further provides that **where the supplier has not paid the tax, recipient shall be required to reverse such credit along with interest, however he may proceed to re-avail the credit reversed by him once supplier makes the payment of taxes.** In light of above proposed amendment, two well-known maxims in law i.e. **Lex non cogitadimpossibila** *(law does not compel a man to do that which he cannot possibly perform)* and **impossibilumnullaobligntoest** *(law does not expect a party to do the impossible)* would aptly apply. The onus that section 16(2)(c) read along with section 41 puts on the buyer is almost impossible to perform as currently there is no mechanism where the fact of payment of tax by the vendor would be communicated to the recipient. In addition to above, there are still host of ambiguities which will continue to scratch the taxpayer's mind, handful of them given hereunder: -

		• Above provision requires payment of applicable interest while reversal. However, interest under Section 50(3) is now required only where there is wrong availement **and** utilization. So, an argument is possible that interest liability would arise only if the credit availed is utilized; • Where late payment is made by supplier along with interest, whether interest would be refunded to the recipient as a compensation; • Whether the time-limit of section 16(4) would apply in case of re-availement of ITC on late payment of applicable duties by the supplier.
4	**Restriction on utilization of ITC**	The Finance Bill also proposes for insertion of **new subsection (12) under section 49.** As per the proposed amendment, it is starting with non-obstante clause whereby as per the recommendation of the council, government is conferred the power to specify class of registered person or a registered person who shall not discharge their tax liability by utilization of full ITC and such tax payers will be compelled to discharge the tax by cash. **It may be noted that Rule 86B, which restricted the payment of output tax liability using ITC to the extent of 99%, has now proposed to receive legal immunity.**

Conclusion

In light of above proposed changes, it would be justified to say that **ITC which was once proposed to be seamless is now becoming direction-less**. With a lot of stipulations, restrictions, conditions, etc. hitting ITC from various facets, ITC availement is now becoming a daunting and herculean task. Complying with all existing laws and conditions is creating a cloud of ambiguity which urgently needs to be addressed. ITC is the backbone of GST system and any misconception in this will indirectly create a hurdle in achieving the aim of ensuring "ease of doing business".

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